

### **REMARKS**

#### **Formal Matters Including Rejections under 35 U.S.C. § 112**

Applicants are amending claims 4 and 5 to further clarify the role of the zeolite or other active ingredients in the adsorbent film layer, and to eliminate redundancy with the features of claim 1 as amended herein. Because these amendments are purely formal, it is believed that they do not change the scope of the claims, and that they introduce no new matter into the specification. It is also believed that these formal amendments address the rejections of claims 4 and 5 under 35 U.S.C. § 112 that are set forth in the Official Action. Accordingly, Applicants respectfully request that these rejections be withdrawn upon reconsideration.

Claim 1 is now amended to incorporate the features of certain preferred embodiments of the invention. Several formal amendments are also made to further clarify claim 1 as amended herein. It is believed that these formal amendments address the rejections under 35 U.S.C. § 112 that are set forth in the Official Action. Accordingly, Applicants respectfully request that these rejections be withdrawn upon reconsideration.

Applicants intend to pursue the subject matter of claim 1, as it stood before the present amendment, at a later date. In this connection, new claim 13 is added to the application. A basis for the amendments to claim 1 and for new claim 13 may be found in the claims as originally filed, *inter alia*; accordingly, it is believed that no new matter is introduced into the application as a result of the present amendment.

Finally, the specification is amended to rectify an apparent typographical error. This amendment is purely formal, and introduces no new matter into the application.

Restriction Requirement

Applicants respectfully renew their request that Restriction Requirement be withdrawn upon reconsideration. Applicants further respectfully request that claims 9 to 12 be rejoined for examination in accordance with the provisions of M.P.E.P. § 821.04.

Art Rejections

The Official Action dated April 9, 2004, repeats the rejections under 35 U.S.C. §§ 102 and 103 that also appear in the Official Action dated August 5, 2003. In summary, claims 1 and 4 have been rejected under 35 U.S.C. § 102 as anticipated by International Publication No. WO99/39675 by Hekal (hereinafter "Hekal"). Claims 2, 4, and 6 have been rejected under 35 U.S.C. § 103 as obvious over Hekal in view of U.S. Patent No. 4,161,562, issued to Yoshikawa et al. (hereinafter "Yoshikawa"). Claims 3 and 5 are rejected under 35 U.S.C. § 103 as obvious over Hekal in view of European Patent Appln. No. 0 686 497, whose inventors are Kennedy et al. (hereinafter "Kennedy"). Claims 3, 5 and 7 are rejected under 35 U.S.C. § 103 as obvious over Hekal in view of Yoshikawa and Kennedy. Finally, claim 8 is rejected under 35 U.S.C. § 103 as obvious over Hekal in view of U.S. Patent No. 5,744,182, issued to Andersson et al. (hereinafter "Andersson"). These are the sole substantive reasons set forth in the Official Action dated April 9, 2004, why the present application should not be allowed.

Applicants respectfully traverse these rejections. The reasoning submitted previously in the present prosecution is neither withdrawn nor abandoned. Applicants further submit the following reasoning:

a. Claim 1 as amended herein is not anticipated by Hekal.

Hekal describes a material that will absorb highly offensive odors produced by the decomposition of bodily fluids and other biological waste. The materials described by Hekal are intended for use in diapers, incontinence aids, portable toilets, shoe liners and underarm shields, sanitary

napkins, "bags containing fish and animal waste" (page 8 at lines 20 to 21), garbage bags, and the like.

In contrast, Applicants' invention provides an improvement to the business of packaging, shipping, and selling fresh fish, and a concomitant improvement to the food safety of consuming packaged fresh fish. As is stated in the specification (page 3 at line 28 to page 4 at line 11 and page 7 at lines 23 to 26, *inter alia*), a low instantaneous rate of release of amines from fresh fish is an important signal to consumers that the fish they are examining is indeed fresh.

When fresh fish is packaged in modified atmosphere packaging according to the prior art, however, the amines that would otherwise dissipate into the ambient atmosphere instead accumulate inside the sealed package. The release of the entirety of the accumulated amines, upon opening a modified atmosphere package, is greater than the amount that is expected by consumers to be released instantaneously by fresh fish. Thus, the consumer is led to a misperception that the fresh fish is no longer safe to eat. Many economic inefficiencies result from this misperception, including the needless disposal of nourishing food, and the purveyor's loss of the purchase price of a product that is incorrectly perceived as unsatisfactory.

To solve this problem, Applicants now provide a package that depletes the headspace inside the package of the amines released by fresh fish. This relatively low level of removal prevents the consumer from mistakenly discarding fresh fish. Moreover, Applicants' invention is carefully designed to allow breakthrough of the amine odors normally produced by fresh fish beyond a certain point in time, thus correctly signaling the consumer when the fish is, in fact, no longer at its peak level of freshness. These features are now specifically recited in claim 1.

Hekal neither teaches nor suggests any non-zero optimal level for the often nauseating odors of decaying bodily fluids. Applicants respectfully question whether such a level can in fact exist.

In this connection, Applicants respectfully submit that, when read in context, Hekal is not describing a material used for packaging fresh fish, but rather a material for packaging “fish [waste] and animal waste”. See page 8 at lines 20 to 21. In stark contrast, claim 1 clearly specifies that the package of Applicants’ invention contains fresh fish, not fish waste.

Moreover, Hekal, in pursuit of the goal of eliminating offensive odors produced by decaying biological waste, has combined a polymer with known odor-absorbing materials, i.e., certain zeolites. Hekal is therefore clearly unaware that incorporating known odor-absorbing zeolites can actually reduce the odor-absorbing capacity of certain polymeric films. This surprising experimental result of Applicants claimed invention is apparent from the data set forth in Table V on page 11 of the specification. Applicants have made use of this new discovery to tailor the amine adsorption of the claimed packaging material as described above.

In summary, Hekal does not set forth Applicants’ invention identically as claimed. Consequently, Applicants respectfully request that the rejection of Claim 1 under 35 U.S.C. § 102 be withdrawn upon reconsideration.

b. Claim 1 as amended herein is not obvious over Hekal in view of Yoshikawa.

The Official Action has cited Yoshikawa to support the proposition that packaging materials comprising multilayer films having an innermost or outermost layer including partially or completely neutralized copolymers of  $\alpha$ -olefins and unsaturated organic acids were known to those of skill in the art on the filing date of the present application. Without addressing this proposition, Applicants note that Yoshikawa includes no teaching or

suggestion to tailor the adsorption capacity of the packaging material described therein. It follows that Yoshikawa does not include every element of Applicants' claimed invention.

As is set forth in detail above, Hekal also does not teach or suggest every element of Applicants' claimed invention. Because Hekal and Yoshikawa, alone or in combination, do not teach or suggest every element of Applicants' claimed invention, Applicants respectfully request that the rejection of Claim 1 under 35 U.S.C. § 103 citing Hekal and Yoshikawa be withdrawn upon reconsideration.

c. Claim 1 as amended herein is not obvious over Hekal in view of Kennedy.

The Official Action has cited Kennedy to support the proposition that packaging materials comprising multilayer films having sealant and food contact layer comprising an ethylene-acid copolymer, or an ionomer of an ethylene-acid copolymer, were known to those of skill in the art on the filing date of the present application. Without addressing this proposition, Applicants note that Kennedy includes no teaching or suggestion to tailor the adsorption capacity of the packaging material described therein. It follows that Kennedy does not include every element of Applicants' claimed invention.

As is set forth in detail above, Hekal also does not teach or suggest every element of Applicants' claimed invention. Because Hekal and Kennedy, alone or in combination, do not teach or suggest every element of Applicants' claimed invention, Applicants respectfully request that the rejection of Claim 1 under 35 U.S.C. § 103 citing Hekal and Kennedy be withdrawn upon reconsideration.

- d. Claim 1 as amended herein is not obvious over Hekal in view of Yoshikawa and Kennedy.

As is set forth in detail above, Hekal, Yoshikawa and Kennedy, alone or in combination, do not teach or suggest every element of Applicants' claimed invention. Consequently, Applicants respectfully request that the rejection of Claim 1 under 35 U.S.C. § 103 citing Hekal, Yoshikawa, and Kennedy be withdrawn upon reconsideration.

- e. Claim 1 as amended is not obvious over Hekal in view of Andersson.

The Official Action has cited Andersson to support the proposition that it was known to those of skill in the art at the time of filing the present application to inject appetizing aromas that did not originate in the packaged food into modified atmosphere packages. Without addressing this proposition, Applicants note that Andersson includes no teaching or suggestion to absorb undesirable aromas, nor to tailor the adsorption capacity of the packaging material described therein. It follows that Kennedy does not include every element of Applicants' claimed invention.

As is set forth in detail above, Hekal also does not teach or suggest every element of Applicants' claimed invention. Moreover, Applicants respectfully submit that the combination of Hekal and Andersson to reject the claimed invention is improper. Modifying the packaging of Andersson with the odor-absorbing material of Hekal would result in the absorption of the Andersson's aromatic materials. Andersson's stated purpose is to expose the consumer to the aromatic materials. Hekal's stated purpose is to avoid exposing the consumer to aromatic materials. It is well established that the proposed combination of references cannot render the prior art unsatisfactory for its intended purpose.

In addition, because Hekal and Andersson, alone or in combination, do not teach or suggest every element of Applicants' claimed invention, Applicants respectfully request that the rejection of Claim 1 under

35 U.S.C. § 103 citing Hekal and Andersson be withdrawn upon reconsideration.

f. The dependent claims are also not anticipated and not obvious.

Claims 2 through 8 depend, directly or indirectly, from claim 1. It follows by statute that claims 2 through 8 are also not anticipated and not obvious, for the reasons set forth above in detail with respect to claim 1. Consequently, Applicants respectfully request that the rejection of claims 2 through 8 under 35 U.S.C. §§ 102 and 103 also be withdrawn upon reconsideration.

Conclusion

A petition for an extension of time for two months and the required fee for the extension is filed concurrently herewith. Should any further fee be due in connection with the present amendment, the Examiner is authorized to charge such fee to Deposit Account No. 04-1928 (E.I. du Pont de Nemours & Company.)

In view of the above remarks and the enclosed amendments, it is felt that all claims are now in condition for allowance, and such action is respectfully requested. Should the Examiner believe that an interview or other action in Applicants' behalf would expedite prosecution of the application, the Examiner is urged to contact Applicants' attorney by telephone at (302) 992-3219.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Craig H. Evans', with a large circular flourish at the end.

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